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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,786	03/16/2004	Jason S. Erdie	EPT-15283	3106

7609 7590 04/18/2007  
RANKIN, HILL, PORTER & CLARK, LLP  
925 EUCLID AVENUE, SUITE 700  
CLEVELAND, OH 44115-1405

EXAMINER
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ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3782

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/18/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/801,786

Applicant(s)

ERDIE, JASON S.

Examiner

Gary E. Elkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 and 34-38 is/are pending in the application.
- 4a) Of the above claim(s) 17-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 34-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4 IDS statements</u>  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of Group I, Figs. 1-5 in the reply filed on 16 January 2007 is acknowledged. Claims 17-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 10-14 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Gebrauchsmuster '991.7. Gebrauchsmuster '991.7 discloses a container formed by a tube 1 and an end cap 2. The tube includes mounting openings 10 receiving projections 6 releasably securing the end cap to the tube. With respect to claim 12, note is made that the end cap includes a "handle" 9 capable of facilitating engagement by the hand to rotate the end cap, if desired.

4. Claims 1-4, 10, 11, 14 and 34 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by the "LCR" Dice Game photographs.

5. Claims 1-3, 10, 11, 14 and 34 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Vajtay (fig. 4 emb).

6. Claims 1-11, 14 and 34-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Nowotny et al. Nowotny et al discloses a container including a tube 10 with mounting openings

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20 and an end cap 12 including projections 26-29. With respect to claim 5, note is made of the figs. 5 and 6 embodiment. With respect to claim 9, no distinction is seen between the claimed container and that shown in the figs. 5 and 6 embodiment, i.e. the side angled or ramped portion of each projection is considered deflectable to some degree when rotated during removal.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Gebrauchsmuster '991.7, the "LCR" Dice Game photographs, Vajtay or Nowotny et al. Each of Gebrauchsmuster '991.7, the "LCR" Dice Game photographs, Vajtay and Nowotny et al discloses all structure of the claimed container except formation of the body with an inner diameter from about 2 inches to about 7 inches (cl. 15) or with a wall thickness between about .05 inches to about .25 inches. With respect to claim 15, it would have been obvious to make the inner diameter of the tube in any one of Gebrauchsmuster '991.7, the "LCR" Dice Game photographs, Vajtay or Nowotny et al with a diameter between about 2 to about 7 inches as a mere selection of what size container is desired to hold a given size of contents. The ability to size a container to hold a given size of content is within the level of skill in this art. No patentable distinction is seen in the selection of the claimed dimensions over any other common container size. With respect to claim 16, it would have been obvious to make the wall thickness of the container in any one of Gebrauchsmuster '991.7, the "LCR" Dice Game photographs,

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Vajtay or Nowotny et al about .05 inches to about .25 inches as a mere selection of one common wall thickness over any other. The difference is seen as a mere change in the thickness/size of the walls relative to any other standard wall thicknesses for a tube.

### *Conclusion*

The remaining cited prior art is illustrative of the general state of the art.

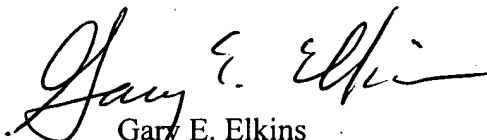
In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.

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A handwritten signature in cursive script, reading "Gary E. Elkins".

Gary E. Elkins  
Primary Examiner  
Art Unit 3782

gee

16 April 2007